



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Environmental Quality

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February 21, 2001

Mr. Frank Williamson  
Assistant General Counsel  
Foss Maritime  
660 West Ewing Street  
Seattle, Washington 98119

**Re: Supplementary Preliminary Assessment  
Foss Maritime Company  
Portland Oregon  
ESCI No. 2364**

Dear Mr. Williamson:

The Oregon Department of Environmental Quality (DEQ) received your letter, dated January 17, 2001. The purpose of this letter is to clarify for you the roles of DEQ and EPA on this project and DEQ's position on the need for further action at the Foss facility.

**Regulatory Oversight.** In your letter, you state that it is your understanding that Foss Maritime (Foss) will be working with EPA regarding any further actions required at the Foss site. Regulatory oversight of the Portland Harbor Superfund site is being jointly managed by DEQ and EPA. Under the Memorandum of Understanding (MOU) between DEQ and EPA, DEQ is responsible for the oversight of investigations at upland facilities, such as Foss, and EPA is responsible for oversight of in water (i.e., sediment) activities on a harborwide basis. DEQ is responsible for identifying current and historic sources of sediment contamination and source control measures. In some instances the evaluation of potential sources will necessitate the collection of sediment samples to determine if a release has impacted Willamette River sediments.

The notice letter you received from EPA inviting Foss to participate in negotiation of an Administrative Order on Consent (AOC) pertains to the harborwide in water or sediment investigations. The AOC does not address upland (e.g., soil, groundwater, surface water, storm water, underground storage tank) issues and does not relieve Foss from addressing Oregon environmental regulations. DEQ has regulatory authority over the upland investigation through the Environmental Cleanup statutes and rules (Oregon Revised Statutes [ORS] 465.200 - .900, Oregon Administrative Rules [OAR] 340-122-010 -

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0140) and the underground storage tank statutes and rules (ORS 466.705 - .835, 466.994 and OAR 340-122-0205 - 0360).

**Need for Further Investigation.** In your letter, you state that Foss does not believe additional investigation at the Foss facility is warranted for several reasons. Each of Foss's reasons and DEQ's response are provided below.

1. Foss did not request tank closure from DEQ.

**DEQ Response:** DEQ has identified hazardous substance releases associated with the tanks as a potential source of contamination that may be impacting the Willamette River, therefore, DEQ is requiring that additional investigation be performed.

2. Foss did not request a delisting decision from DEQ.

**DEQ Response:** The Foss facility has not been added to DEQ's confirmed release list or inventory, therefore, a delisting decision is not applicable to this site. Data generated from the requested investigation will be used to determine if releases at the Foss facility meet the criteria for listing on the CRL or inventory (OAR 340-122-074 and 340-122-075).

3. Foss believes there is "no evidence that Brix's operations have contributed any contaminants to the sediments of the Willamette River."

**DEQ Response:** It is DEQ's opinion insufficient data exist to determine that the documented hazardous substance releases associated with the underground storage tanks at the Foss facility have not impacted groundwater or the Willamette River. It is the Department's opinion that additional data is needed to evaluate potential contaminant sources at the facility and to determine if complete contaminant migration pathways to the river exist. Due to the proximity of the potential contaminant sources to the Willamette River and the potential for these releases to have impacted site groundwater or the Willamette River, DEQ is requiring that additional investigation be performed.

**Potentially Responsible Parties.** In your letter you state that "Foss has never operated at the site, therefore, Foss cannot be considered a PRP." It is DEQ's understanding that Foss Maritime is the assumed business name of Brix Maritime Co., that Brix is the current owner of the facility, and that Brix dba Foss has operated the facility since at least 1993. Based on these facts, it appears that Brix dba Foss is liable under ORS 465.244. Please provide DEQ with any information you believe is relevant to defining Foss and Brix's liability for this facility.

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DEQ would be happy to meet with you and your consultant to discuss our December 19, 2000 comments. DEQ requests a written comment-by-comment response to our letter and a sampling and analyses plan for the investigations described in DEQ's letter be submitted to DEQ, no later than March 15, 2001. Please do not hesitate to call me at (503) 229-5562, if you have any questions.

Sincerely,



Rodney G. Struck, R.G.  
Project Manager  
Voluntary Cleanup and Portland Harbor Section

cc: ECSI File No. 2364  
LUST File No. 26-93-0009  
Mike Rosen, DEQ/NWR  
Eric Blischke, DEQ/NWR  
Wallace Reid, EPA Region X  
Elizabeth McKenna, EPA Region X  
Kurt Burkholder, Oregon Department of Justice  
Larry Johnson, Foss Maritime  
David Templeton, Anchor Environmental